

PURPOSE

The Michigan Department of Health and Human Services (MDHHS) is a public body required by law to provide public records to persons requesting public records unless those records are exempt from public disclosure by the Freedom of Information Act (FOIA) or some other statute.

The policy contained in this transmittal is intended to ensure uniformity of practice and procedures in the release of public records and in the fees charged for the cost of processing a request for public records

DEFINITIONS

FOIA Coordinator

A FOIA coordinator is the person designated by the department director with the primary responsibility to accept and process requests for public records.

Assistant FOIA Coordinator

Assistant FOIA coordinators are persons designated by the FOIA coordinator to accept and process requests for public records on behalf of the FOIA coordinator.

FOIA Liaison

FOIA liaisons are designated persons in the department who are contacted by the FOIA coordinator or the assistant FOIA coordinators to assist in determining whether the department has any public records that are responsive to a FOIA request.

FOIA Request

A FOIS request is a written request to the department that sufficiently describes the records in a manner in which they can be identified.

Person

Person is defined as an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

Public Record

A public record is a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function from the time it is created. Public record does not include computer software.

Requestor

A requestor is the person (see definition of person) making the request for documents under the FOIA.

Writing

Writing is defined as handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drum, or other means of recording or retaining meaningful content. A writing is also information contained in a database or electronic records.

POLICY**General
Information**

All documents in the department's possession are public records subject to the FOIA, for which a disclosure determination is made by the FOIA Coordinator. This includes documents in the department's possession that are created by another agency (for example, LARA, CMS, etc.). However, documents which are possessed only by another agency or an entity under contract with the department do not constitute the public records of the department.

FOIA requests may be submitted in person or via mail, facsimile machine or electronic mail. The addresses where FOIA requests can be sent to the department are listed on the department's website. Except as set forth in paragraph 3, any written request for a document shall be considered a FOIA request, regardless whether the FOIA is mentioned.

The following types of requests are not FOIA requests but they must be forwarded to the Bureau of Legal Affairs for the proper processing:

- A request from a governmental agency, including a court, which is entitled by law to receive the information or documents requested (for example, a request under the Michigan Unemployment Compensation Act or from the Auditor General).
- A discovery request pertaining to a lawsuit (for example, Request for Production of Documents). All discovery requests must be referred to the litigation coordinator, as set forth in the department's lawsuit policy.
- A request from the Department of Attorney General for documents that are needed for pending litigation. These requests will be processed by the litigation coordinator.
- A request from a private or governmental agency for employee personnel information which the employee has authorized to be released (for example, employment verification to a lending institution or prospective employer). These requests must be referred to the department's human resources office.
- A request from an employee to inspect the employee's personnel or medical files, or to receive one copy of the documents in those files. These requests must be referred to the department's human resources office.
- A request from a collective bargaining unit under its contract for documents related to a disciplinary matter. These requests must be referred to the department's human resources office. The appropriate personnel office shall be advised of requests processed under the FOIA.
- Documents required to be produced by a subpoena or other court order.
- A request for information from a news media representative that does not involve releasing public records.
- A request from a law enforcement agency.
- Requests from clients and beneficiaries for their own individual services records, claim payments, or assistance case records.
- Requests to Disability Determination Service (DDS) from attorneys or law firms for the medical records of their clients.

**DEPARTMENT FOIA
COORDINATOR**

Under Section 6 of the FOIA, the FOIA coordinator for the department will be the person designated by the director of the department. Assistant FOIA coordinators may be designated to act on behalf of the FOIA coordinator to accept and process FOIA requests received by the department.

The FOIA coordinator must designate an assistant coordinator at each hospital and mental health center as identified by the director of each center. The assistant coordinators at the state hospitals and center must:

- Forward to the FOIA coordinator annual statistics on the number of FOIA requests.
- Maintain a copy of all FOIA requests received and all completed responses to a request for public records. These documents must be retained according to the department's retention and disposal schedule, but for no less than one year, consistent with Section 3(2) of the FOIA.

**PROCESSING FOIA
REQUESTS**

A FOIA request received by an employee must be immediately forwarded by email, fax transmittal or hand delivery to the appropriate FOIA coordinator or assistant FOIA coordinator. Verbal requests for public records are not accepted. A request received by facsimile or electronic mail shall be considered received on the business day following the date of transmission. But if a request is sent by email and delivered to the department's spam or junk mail folder, the request is not received until one day after the department first becomes aware of the request. For all other requests, receipt date is the day the request is received anywhere within the department.

The FOIA coordinator or assistant FOIA coordinator must respond to the request within five business days after the department receives the FOIA request by doing one of the following:

1. Granting the request.
2. Denying the request.
3. Granting the request in part and denying the request in part.
4. Extending the time to respond for not more than 10 business days. If the department extends the period to respond, the

extension must notify the requestor that the ten- business day extension is being taken, the reason for the extension, and the new date for response. Reasons for an extension may include the records are at a remote location; it's necessary to locate and review a large number of records; or the complexity of the request requires additional time to adequately respond.

The FOIA coordinator or assistant FOIA coordinator reviews the request and determines whether the department possesses nonexempt records responsive to the request. The department will provide existing, nonexempt public records under the name given by the requestor or by another name reasonably known to the department. The department may respond to a FOIA request by notifying the requester that the public records are available at the department's website and providing the address for the webpage where the requester can obtain the records.

- The FOIA does not require a public body to make a compilation, summary or report or information, except as required by Section 11 of the FOIA. However, it is not prohibited.
- The FOIA does not require a public body to create a new public record, except as required in Section 11 of the FOIA. However, it is not prohibited.

The extracting of certain fields within a database is acceptable and does not constitute creating a new record. However, if other fields of the database are exempt under the FOIA, those fields will need to be redacted or removed from the record with the proper exemption being applied. Contact the FOIA coordinator for questions in this area at MDHHS-FOIA@michigan.gov.

The FOIA Liaisons are responsible for obtaining the requested documents that are in the Department's possession. The FOIA coordinator or assistant FOIA coordinator sends the FOIA requests to the FOIA liaisons. The FOIA liaisons then ask department program staff to determine whether the department has any documents that are responsive to the FOIA request. If the department does not have the documents requested, the FOIA liaisons are not required to obtain documents from outside the department, including from another agency or an entity under contract with the department to comply with the request. FOIA liaisons must send, electronically if possible, the documents to the FOIA coordinator or assistant FOIA coordinator. If the records are available on line, then the FOIA Liaison will notify either the FOIA

coordinator or the assistant FOIA coordinator. The notice to the requester will inform the requester that the records may be accessed on line, but if the requester asks for paper copies of the records, then the department will send the requester paper copies of the records and the department will charge a fringe benefit multiplier of 50 percent to the labor charge of providing the paper records. The FOIA liaisons will notify the FOIA coordinator or assistant FOIA coordinator when a request cannot be granted or denied within the original 5 business day response period. The FOIA coordinator or assistant FOIA coordinator will determine if an extension is warranted.

The FOIA coordinator or assistant FOIA coordinator carefully reviews the documents obtained from the FOIA liaisons to ensure information and documents exempt from disclosure are not provided. Denials of requests must:

1. Explain the reason for the denial, including any exemptions.
2. Include a description of that part of a public record that is separated or deleted if separation or deletion is made.
3. Include an explanation of the requestor's right to appeal to either the department director (or the director's designee) or to the appropriate court.
4. Notify the requester of the right to receive attorneys' fees and damages if, after judicial review, the court determines that the department has not complied with the FOIA and orders disclosure of all or a portion of a public record. If more than one exemption applies to a particular request, all relevant exemptions must be listed when responding to a FOIA request. If the request is denied because the public record does not exist, that reason must be listed on the denial of the request and the denial serves as the certification that the public record does not exist.

If only a portion of a document is exempt, the exempt portion must be deleted and the nonexempt portion of the document must be disclosed. Exempt portions of a document must be illegible on the copy provided.

The FOIA coordinator or assistant FOIA coordinator must forward FOIA requests that are media-oriented or litigation-oriented to the Department's Public Information Officer (PIO) in the communications office. The PIO and the FOIA coordinator may

determine to answer a media request outside of the FOIA process. Copies of FOIA responses to media FOIA requests must be sent to the PIO.

Only the FOIA coordinator or the assistant FOIA coordinators have the authority to review, approve, and sign responses to FOIA requests.

EXEMPTIONS UNDER FOIA

The exemptions allowed by the FOIA are expressed in general language and may be applied to the specific document requested. The following are some of the exemptions which are most frequently used and examples of the items to which the exemptions may apply:

- Clearly unwarranted invasion of an individual's privacy. Exemption 13(1)(a).

Example: Home addresses and home telephone numbers, personal cellular phone numbers.

- Information which is preliminary to a final agency decision unless it is purely factual and the public interest warrants disclosure. Exemption 13(1)(m).

Example: Interview notes; internal affairs, harassment and sexual harassment investigations before completion. (Note: Portions or all of an investigation may be exempt after completion for other reasons, for example, privacy or security concerns.)

- The FOIA also permits exemption of documents or information specifically exempted from disclosure by another statute, Exemption 13(1)(d).

Example: Documents and records protected under the Mental Health Code.

- The home addresses, home telephone numbers, and other information contained within the personnel files of a department employee, unless the requestor is the employee. However, the employee's name, age (not date of birth), past and present positions with the department and length of service in a position shall be provided to any requestor. For purposes of this exemption, personnel files include medical and expunging files maintained on an employee.

- Information which is subject to a specific privilege (for example attorney-client, doctor-patient, psychologist-patient), except if the requestor has a signed release from the client or patient that is Health Insurance Portability and Accountability Act compliant. Exemption 13(1)(g) & (h).
- Information or records that would disclose the social security number of any individual. Exemption 13(1)(w).
- Information or records relating to a civil court action in which the requesting party and the department are parties.

The department will not release records which are exempt from disclosure by other statutes. Since most client records are confidential, the FOIA coordinator or assistant FOIA coordinators will follow applicable law, policy, and manuals when releasing client records.

FEES

The department charges a fee consistent with the FOIA. The total fee will not exceed the total of:

- The labor costs directly associated with the necessary searching for, locating, and examining public records.
- The labor costs, including necessary review, directly associated with separating and deleting exempt information from nonexempt information.
- The actual and most reasonable economic cost of providing copies of the records in formats that may include paper copies, non-paper physical media, including computer discs, computer tape, and other digital or similar media.
- The actual total incremental cost of necessary duplication or publication for paper copies of public records if paper copies are provided.
- The cost of labor directly associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records on non-paper physical media or through other electronic means.
- The actual cost of mailing for sending the public records in a reasonably economical and justifiable manner.

Except as set forth below, all FOIA requestors shall be charged 10 cents per page. The department will use the most economical means available for making copies of public records, including using double-sided printing when available. .

A requestor shall not be charged for the first \$20.00 of a FOIA fee if either:

- The requestor has submitted an affidavit verifying that the requester is indigent and receiving specific public assistance or sufficiently stating facts showing an inability to pay the cost due to indigence.
- The requester is either a non-profit organization formally designated by the state to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, and the Protection and Advocacy for Individuals with Mental Illness Act or their successors if the request is made directly on behalf of the organization or its clients, the request is made for a reason wholly consistent with the mission and provisions of law establishing those organizations, and the request is accompanied by documentation of its designation if requested by the department.

An indigent requester is ineligible for the fee reduction if the individual has previously received discounted copies of public records from the department twice during the calendar year or the individual requests the information in conjunction with outside parties who are offering or providing payment to the individual to make the request. If the requestor is eligible for a requested discount, the department will note the discount on the detailed itemization of the fee. If the requestor asks for a discount but is ineligible for a discount, then the department in its response to the request will inform the requestor the reason for ineligibility. Questions concerning the waiver of fees should be directed to the FOIA coordinator.

The actual cost of searching for, locating, examining, and separating exempt information from nonexempt information, copying, including the duplication of CDs, diskettes, audio tapes, video tapes and related items, will be charged at the hourly wage of the lowest-paid employee (for example, general office assistant E6, secretary 9) capable of performing these tasks, Labor costs in searching for, locating, examining public records and separating exempt information from nonexempt information will be estimated and charged in increments of 15 minutes with all partial time

increments rounded down. The department will not charge for labor directly associated with redaction if it knows or has reason to know that the department previously redacted the public records and the redacted version of the public records are still in the department's possession. The department may also add up to 50 percent of the labor charge to cover the cost of fringe benefits but the department will not charge more than the actual cost of fringe benefits and will not include overtime wages in calculating the cost of fringe benefits. The department will not include overtime wages in calculating labor costs unless the requester specifically stipulates to the overtime costs.

In cases where a fee will be charged, the FOIA request shall be approved specifying the amount assessed and indicating that the documents will be provided after payment is received in full. If the amount assessed will exceed \$50.00, exclusive of any waived amounts, the FOIA coordinator or assistant FOIA coordinator may either:

- Inform the requestor the fee amount and send the records after the fee is paid.
- Send the requester a notice with a detailed itemization of the fee within the applicable time limit requiring a deposit of no more than 50 percent deposit of the estimated fee.
- The response will also contain a good-faith, nonbinding estimate of the time to provide the public records to the requester. If a deposit is required the department will complete processing the request after the department receives the deposit and will notify the requester of the balance due. The balance must be paid before the documents are delivered to the requestor. If the department is not paid the total amount of a fee for a request, the department may require a deposit of up to 100 percent of the estimated fee before beginning a full public record search for any subsequent request from that requester if:
 - The final fee for the previous request was not more than 105 percent of the estimated fee.
 - The public records made available contained the information being sought in the prior request and are still in the department's possession.
 - The public records were timely made available.

- 90 days have passed since the department notified the requester in writing that the public records were available.
- The requester is unable to show proof of prior payment to the Department.
- The department calculates a detailed itemization of the estimated fee deposit for the current request. But the department will not require an increased estimated fee deposit if:
 - (1) The requester is able to show proof of prior payment in full to the department.
 - (2) The department is paid in full for the prior request.
 - (3) One year has passed since the requester made the prior request.

The department does not have a process for appealing a fee that exceeds the amount permitted under this policy and procedure. Instead, if the department requires a fee that exceeds the amount permitted under this policy and procedure, the requester may commence a civil action in the appropriate court for a fee reduction.

INSPECTION

The FOIA also requires that at the request of the person making the request, a reasonable opportunity for inspection of nonexempt public documents shall be allowed during normal business hours. The FOIA coordinator or assistant FOIA coordinator must remove exempt material before the inspection. There is no charge for inspection of documents, although a fee will be charged if it is necessary to make a copy of a document to redact a portion that is exempt. There may be charge to supervise the inspection of records.

APPEAL OF DENIAL

A requestor whose request has been denied in full or in part may appeal the denial to the director or the director's designee. The appeal must state the word appeal and identify the reason or reasons for the reversal of the denial. Within 10 business days after receiving a written appeal, the director or the director's designee must either:

- Reverse the initial denial determination.
- Issue a written notice to the requester upholding the initial denial determination.
- Reverse the denial in part and issue a written notice to the requester upholding the initial denial in part.
- In unusual circumstances issue a notice extending the period to respond for not more than 10 business days.

The director or the director's designee cannot issue more than 1 notice of extension for a particular appeal. The department does not provide for fee appeals as described in section 10a of the FOIA, MCL 15.240a. Instead, a requester may commence a civil action in the court of claims if the requester alleges the department required a fee that exceeds the amount permitted by this policy and procedure.

PROCEDURE

The FOIA Coordinator is responsible for providing assistance and advice to all FOIA liaisons in processing FOIA requests involving complex documents or confidential information. The following procedure applies to central office staff only. The department's hospitals and centers will follow their own procedure consistent with this policy.

Responsibility**Action****Central Office Employee**

1. Receives a request for public records (FOIA).
2. Forwards the request to the department FOIA coordinator or assistant FOIA coordinator immediately, preferably by email to the department's FOIA electronic mailbox at MDHHS-FOIA@michigan.gov.

Coordinator

1. For requests not received by electronic mail, stamps the request with date received in the FOIA office.
2. Enters information in all possible fields of the database, including giving a number to the FOIA request, the name and contact information of the requester, the date of the FOIA request, the date the FOIA request was received and by what means the request was received, the due date of a response, the actual text of the request, the date the response was sent to the FOIA Liaison and the date the FOIA liaison must respond to the FOIA coordinator or assistant FOIA coordinator.
3. Completes FOIA memorandum requesting documents and forwards to the appropriate FOIA liaison. The memo to the FOIA liaison must include the date of the FOIA request, the date the FOIA liaison must respond to the FOIA coordinator or assistant FOIA coordinator, and the text of the FOIA request.

Liaison

Receives memorandum from FOIA coordinator or assistant FOIA coordinator requesting documents.

- If documents requested are not maintained in that office/bureau, the appropriate box should be checked and the memorandum returned to the FOIA coordinator by due date.
- If documents are maintained in the office/bureau:
 - Ensures appropriate documents are gathered.
 - Reviews documents for accuracy and completeness.

- Sends electronic copies of the records along with electronically signed memorandum to FOIA coordinator or assistant FOIA coordinator within designated time limit.
- If the records are available on a department webpage, send the FOIA coordinator or assistant FOIA coordinator the webpage address along with the electronically signed memorandum.

Coordinator

Carefully screens documents for exemptions. If a fee is applicable:

1. Determines appropriate amount and notifies the requestor using the appropriate department form.
2. Enters action taken, fees, description of documents requested and any other pertinent information on computer.
3. Dates response and mails the original form to requestor either by e-mail or regular mail.
4. Logs the date the response form was mailed and a copy of the notice to the requester.
5. Receives payment from requestor, stamps date received in the FOIA Office, pulls original request, and makes copy of check or money order.
6. Prepares fee receipt. Sends check and one copy of receipt to finance within one business day of receipt. Ensures one copy of receipt is maintained with file copies.
7. Records payment received.

APPEALS

Coordinator

1. Receives all FOIA appeals from department director or the department director's designee.
2. Assigns number and enters FOIA appeal into database.

3. Investigates initial response and prepares a response to the appeal. Draft response to the appeal is forwarded to the department director or the department director's designee.

Director

- Receives the draft response to the appeal.
- Upholds or reverses initial FOIA response.

Coordinator

Receives signed appeal response from the director or the department director's designee, makes copy of appeal response and maintains file. Forwards appeal response to the requestor.

REFERENCES

1976 PA 442 as amended.

[The Administrative Guide to State Government 2410.01 Freedom of Information Act \(FOIA\).](#)

CONTACT

Contact the department's FOIA electronic mailbox at MDHHS-FOIA@michigan.gov.